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Legitimacy Dilemmas of
Supranational Governance:

The European Commission Between
Accountability and Independence

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The European Commission
Between Accountability and Independence**

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Introduction:^{*} Political Integration, Institutional Reform and the Crisis of Legitimacy

In the 1990s we have witnessed a major transformation in the nature of European integration: the gradual emergence an agenda for the 'constitutional reform' of the European Union. After the ratification debates which followed the signing of the Maastricht, the Reflection Group (Council of the European Union, 1995) helped to set the agenda for the 1996-97 Intergovernmental Conference (IGC). There was great diversity in the kind of solutions which were expected from the 1997 Amsterdam Summit which concluded this particular round of reform. But a reform agenda which centres on the issues of democracy and effectiveness has undoubtedly emerged. The Amsterdam Treaty essentially deals with the fundamental structural arrangements for future EU decision-making. This, in itself, is no small matter: it indicates that we are witnessing not only a quickening of structural reform in the EC/EU - indeed a trend towards continuous reform - but also a move away from the pre-occupation with *policy* (Single Market, EMU) in past IGCs, towards a genuinely *institutional* reform. It seems as if the EC/EU has gone full circle: after the 1955 EPC/EDC failure there was the move away from political integration and a concentration on the laborious process of market integration (customs union, '1992' programme, EMU), only to return in the 1990s to confront the accumulated back-log of 'political' and institutional issues.

Market integration has been extremely successful. Yet the very success of progressive tariff reduction and de-regulation, it has been argued, was in part made possible because a parallel movement towards the establishment of accountable, political structures was lacking (Moravcsik, 1993). In such accounts, striking fundamental inter-state bargains - such as customs union/CAP and Single Act/structural fund reform - was only possible because decision-makers operated in closed session, insulated from national publics. The decision among Member States in March 1996 not to allow the participation, or even a simple observation role for Members of the European Parliament at the 1996 IGC indicates how secretive the inter-state bargaining process still is.

But the very success of 'indirect' integration - reaching an "ever-closer union" through market and legal integration - has forced the 'political', institutional questions back onto the centre stage of Union reform. Much of the 1996-97 IGC was, in fact, an exercise in damage control. 'Amsterdam' was

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meant to pick up Maastricht's unfinished business: since the political union negotiations leading to the TEU were hurriedly and unsatisfactorily brought to a close, Member States agreed to launch a revision and stock-taking IGC in 1996. More importantly, there were the lessons learned after the signing of Maastricht - that it is not legitimate to join essential state functions such as monetary policy cannot be joined irrevocably, if not, at some stage, accountable political institutions, and public awareness of their efficiency, are built up. Beyond this concern with legitimating past achievements, 'Amsterdam' was also, indeed above all, a piece of anticipatory damage control: the reformed treaty has sought to prepare the EU's decision-making system with the kind of structures and procedures that are needed for the next round of enlargement.

There are a number of ways in which the legitimization of the European construction can be approached: this paper concentrates on one key institution, the European Commission. In doing so, it seeks to show that for the legitimization of its complex institutional structure the European Union cannot rely on one-dimensional domestic analogies. To this end, this paper provides a critique of some of the conventional writings on the Union's 'democratic deficit'. The paper is structured in three parts. First, the normative basis underlying the discussion of constitutional choice is spelled out. A second part examines the requirements of legitimising European governance against the background of problems with standard theories of majoritarian democracy. The model of legitimization of European integration developed here is then applied to the specific institutional arrangements which concern the European Commission. The conclusion considers proposals for a resolution of this dilemma against the background of the Amsterdam Treaty.

Normative Foundations of European Integration

Debating European constitution choices necessarily involves certain value-judgements about European governance. Any discussion of the legitimacy of European governance ought to spell out its assumptions with regard to the normative basis of integration. It is only following such a clarification that a discussion of the EU's reform debate can be sensibly engaged and that 'better' constitutional solutions can be proposed. This section discusses three basic premises about the nature of integration which are guiding the subsequent discussion: first, European integration is of independent normative value above and beyond the benefits it provides to specific states, groups and individuals. Second, integration must be understood as an open-ended process rather than the emergence of a set of institutions and policies; third, European integration is not only the expression of, but also the response to, processes of globalisation.

Each of these assumptions has important repercussions for the subsequent discussion of legitimacy in the European Union.

The first of these points, the independent value of European integration, is perhaps the most contentious. Yet looking at the origins and early history of the European Community it is evident that West European integration was, for a significant period of time, regarded as something more than merely a utility maximisation of national interests. The *idea* of European integration was one of superseding competition and conflict between nation-states by replacing the state-system with a qualitatively different system. Many saw this as a federal project, but as this proved to be far-reaching, recourse was made to functional integration. Subsequently, the normative aspect of the European idea - indeed the European idea itself - were largely lost from view as the emphasis was on functional logic and national interests. Yet it is crucial for this understanding of integration that the functional path has merely been the method rather than the aim, of European integration.

Elevating the process of integration to such a normative position is not to say that the EU is superior to the nation-state as a framework for problem-solving, or that its output is inevitably good. Indeed, below this paper will discuss in some detail both the continuous significance of states in Western Europe and the pathologies of European policy-making. But neither can the value of integration be judged solely by looking at the short-term benefits which states seek and derive from membership. During the functional, 'non-political' phase of the Community, the value of closer integration was presented in such utilitarian terms. Membership in the Community, and the further development of its policy-instruments would increase trade, economic growth and global competitiveness. While this might, on the whole, well be the case, it has made the justification of further integration difficult when, or where, these benefits have not been forthcoming.

If integration is justified in purely utilitarian terms, the fundamental value of an enduring and stable framework of inter-state cooperation based on the rule of law is largely lost. To point out that the initial function of integration was to foreclose the potentiality of renewed war between Germany and France seems almost nonsensical in the 1990s. Yet the issue of German unification in 1990 has emphasised the significance of a strong and stable European architecture capable of absorbing the shocks of change in Central and Eastern Europe. There are probably many examples of the way in which the process of integration has helped to pacify domestic or inter-state conflicts (such as Belgian territorial politics or the conflict in Northern Ireland). But the fixation on functional

integration and the preoccupation with national interests has helped to obscure the long-term significance of European integration.

The stability which integration has brought to European politics is not so much the consequence of current agreement among member states as it results from the accumulated experience of a legal and institutional framework that has been built up over the past 45 years. The characteristics which are specific to European integration - the degree of transparency it has brought to international politics, the rule of law it has established in inter-state relations, the scale of administrative and commercial interaction it has generated - make this a normatively valuable framework for political decision-making.

Clearly, there are limits to the transparency and the rule of law in the EU, as there are serious limits to democratic participation. But a normative judgement must be based on comparison with a credible alternative to the path of integration which has been followed. The most likely alternative to functional integration is the persistence of a state-centred system in which decision-making would be much less democratic, transparent, justiciable and efficient. Seen in this light, the critique of the Union's 'democratic deficit' for a further democratisation of the EU is only credible if it is based on an affirmation rather than a rejection of the integration process. Dismissing the European project because of a perceived lack of democratic procedures is, consequently, misplaced.

The normative value of European integration can therefore be derived from arguments about the accountability, transparency and effectiveness which the process has brought to the international relations of the region. These are moral categories which are usually invoked by those who criticise the democratic credentials of the European integration. Yet, even though a normative defence of integration based on liberal ideals is possible, this must remain an assertion rather than reasoning. This is because the arguments provided here will not convince those for whom the nation-state is a value in itself. Nationality remains a normative category of its. To those who consider nationality rather than democracy the normative foundation of government, there is nothing in the process of European integration which will persuade them that the EU has a normative quality of its own.

In practice, EU politics frequently force a choice between the values of nationality and the values of integration. The public reception of integration issues might even over-emphasise the degree to which such a choice has to be made. Yet beyond justifications for the maintenance of the national veto in the Council there is little systematic discussion in the academic literature about

such normative implications of European union. Most authors adopt implicit positions on whether they consider the EU to serve the interests of states or whether states have to accept limitations to their prerogatives for a higher value. While there is no space here to go further in this direction, what has been said will have been sufficient to make it clear why, in this paper, integration is regarded as having autonomous value.

A second premise of this paper - that European integration is a process rather than a set of institutions, policies and procedures - will be more easily acceptable to most observers. It will suffice here to point to the spatial and institutional dynamics which are likely to keep this process going for the foreseeable future. This is no small matter since, in the conventional understanding, constitutionalisation is by definition aimed at the design of fixed framework for political decision-making. Constitutionalisation itself might be a process, but its result - a constitution - is meant to limit rather than facilitate changes in political structures and procedures. Legitimising a process rather than a static entity therefore requires constitutional choices that are fundamentally different.

Reference has been made to the necessity of designing structures which conform to the values of democracy and effectiveness. This is difficult enough, requiring the kind of value trade-offs every federal-type system has to face (Kincaid, 1995). But in the current EU debate, many view the IGC as facing a further constitutional choice: the trade-off between 'widening' and 'deepening' the European Union. This widening v. deepening debate, now that applications for membership from Mediterranean and East European countries are piling up, and that elaborate 'pre-accession strategies' have been devised, is clearly more than a catalyst for policy-reform. Enlargement certainly questions the viability of the CAP and other redistributive instruments. But, more fundamentally, enlargement raises questions about the very identity of the European Union. Asking "where does Europe end?" is inseparable from asking "what is Europe?". The fact that the EU's borders are not finally set - never have been, and will not be for the foreseeable future - means that its constitutionalisation is fundamentally different from otherwise comparable reform processes in national settings. European integration has created institutional structures and constructed a lasting arena for public policy-making, yet it remains essentially a *process* of integration. However federal it may turn out to become, it is not, and cannot be, a state.

European constitutional choice has to take account of this procedural nature of things. It is, at best, futile to try and define a process in static, and statist, terms. But doing so might also do damage to the integration process if such an

attempt was made. Integration needs to design a framework which is open-ended enough to allow future enlargements, while at the same time addressing the issues of concern and of interest to the current members. It must also be grounded in past choices. There is no *tabula rasa* from which a "European Constitution" could be designed. Reform needs to be based on past choices and present institutional realities - on both the national and European level. Proposals for radical reform ignoring this basic principle - such as the 1955 Treaty for a European Political Community and the European Parliament's 1984 Draft Treaty for European Union - are bound to be studied by historians as instances of utopianism.

A final point here concerns the relationship between processes of integration and processes of globalisation. Part of the problem in reforming the EU has often been that it is seen as an expression of globalisation and, by inference, as a sign of governments "giving in" to globalising social and economic forces which erode national sovereignty and national identity. This is unsurprising considering the amount of trade liberalisation the EU has been engaged in, and the way in which this has been justified as a response to global competitiveness. Yet it is crucial in the understanding of European governance presented here that integration is a dynamic reaction to globalisation. What is, on the one hand, a loss of national autonomy in social and economic regulation, is, on the other hand, the emergence of a system in which states can collectively regain some regulatory control over otherwise untrammelled processes of globalisation. The development of the European Union is, in this sense, not the capitulation of nation-states in the face of global markets and other transnational forces, but their rescue (Milward, 1992). Beyond that, the emergence of a specific policy-making arena on the European level is an expression of structural differentiation in the international system where transnational and supranational organisations are becoming significant structures for collective action (Cerny, 1995).

In this perspective, European integration is a process in which the translation of abstract democratic ideals needs to respond not just to citizens' ability of participating in decision-making (which is diminishing in the EU), but also to the system's capacity to facilitate public control over transnational economic and social processes (which is intensifying in the EU). As a consequence, there is a need to reformulate democratic theory - in a manner comparable to its transformation from city-state to nation-state - if we are to make normative sense of European integration (Dahl, 1995).

Part of the established landscape that needs to be moulded into constitutional choices in the future are the European institutions themselves. As

an exercise in the analysis of procedural reform, this paper will look at the European Commission. Much of the 'democratic deficit' debate is directed at the operation and involvement in EU decision-making of the European Parliament, but also the Commission - its relationship to Parliament (Westlake, 1994), its degree of openness and transparency, its link with private interests (Mazey and Richardson, 1994; Obradovic, 1994) - is increasingly subject of academic interest. Yet, the Commission has not undergone any fundamental structural change since its inception. Its role and charter are largely unchanged, even though Council, Parliament and Court have metamorphosed significantly. The Commission is, therefore, a key aspects in reflections about constitutional choices the EU has to face.

Legitimising European Governance: Beyond Majoritarian Democracy

The public debate in recent years has converged around the notion that the EU's problem with legitimacy is essentially its "democratic deficit". There are additional problems, such as a Court frequently regarded as 'activist' (Rasmussen, 1988) or the apparently limitless extension of competences (Pollack, 1994). Yet the essence of the problem are the limitations placed on the use of the national veto in the face of still rudimentary parliamentary powers. As a result, the bulk of legislative decisions in the EU are taken by qualified majority vote (QMV) in closed session by a collectivity of executives who are, at best, indirectly elected representatives. This, in a nutshell, sums up the EU's democratic deficit.

There are many variations and further developments of this problems that need to be addressed - the distance between parliament and electorate, the size of constituencies, the problem of language, the relationship between national and European Parliaments, the use of referenda - but the general acceptance is that in order to legitimise a European Union operating on a regular QMV basis, a healthy injection of representative democracy is needed. Alternatively, those who object to an extension of the powers of the European Parliament, such as the last British governments under Conservative rule, also demand reductions in the use of QMV (Cabinet Office, 1996).

Yet, at a closer examination, the democratic legitimacy of the Union is increasingly seen as a highly complex issue, in which the "majoritarian avenue" might do damage to the European project (Dehousse, 1995). The underlying problem here is the conceptual history of liberal democracy. If we look at their origin and early practice, we see that structures and procedures of representative government are not simply the instruments of liberal democracy as which they

are usually regarded. They have functioned also as elements in the constructions of nation-states. Indeed, in the liberal era, the conferral of democratic and other citizenship rights has been one of the most important instruments for state-building. From the French Revolution onwards, the extension of parliamentary democracy was essential in the creation of strong central states based on a common national identity.

The conferral and the guarantee of citizenship rights requires final authority. There must also be boundary to the community upon which democratic rights and obligations are bestowed. Democratic theory itself cannot give any satisfactory answer to these questions (Barry, 1989). In this respect liberal democracy and representative governments necessarily needs to refer to pre-draw state or communal boundaries, or else use what Barry calls "arguments of persuasion" to create new boundaries. But will then have to establish hierarchical structures for the implementation of democratic procedures. Borders and hierarchy are the hallmark of the modern state. And while the establishment of democratic regimes has not always *created* states, and while many states remain undemocratic, there are no examples for state-less forms of democracy.

But it is a particular sequence of historical events which has created this apparently inherent link between democracy and state-building. It certainly ought not to stop us looking for and thinking about 'state-less' forms of democracy, something which a growing number of scholars has undertaken (Rengger, 1993; Held, 1992; Tassin, 1992; Weale, 1995) In the particular context of a discussion about European constitutional choice, there must also be recognition that the linkages that have developed between liberal democracy and the modern state are, in part, contingent developments.

Historically, the establishment of liberal democracy came to be tied to, first, popular sovereignty and, later, national self-determination. Popular sovereignty demands that 'the people' have ultimate control over the institutions of state. National self-determination demands that each nation be recognised as 'a people' with the right to determine their own affairs. These two principles have been fused in the powerful combination of ideas and values that is the nation-state. The revolutions of the 18th, 19th and 20th century each had their part in establishing the fusion of "people's power" with "national liberation", joining citizenship with nationality and thus confusing nation, *nación* and "the people". As a result of these historical contingencies we are now faced with a generalised perception that the acquisition of democratic rights requires the establishment of a state - possibly a state within a federation, but preferably an independence state. This is the message transmitted by the experience of post-1945 de-

colonisations as much as from post-1989 democratisation in Central and Eastern Europe. It is, indeed, the message from the debate about the British constitution, where the survival of the Union is juxtaposed to the extension of internal democracy.

As democratisation becomes a dominant issue in the European Union, this historically constructed linkage between democratisation and nation-state-building. The German Constitutional Court judgement on the Maastricht Treaty, for example, spelled out the limits of further integration in terms of 'national democracy'. Part of the argument was based on the idea that the sovereignty in Europe lay with the various state-peoples (*Staatsvölker*). If democracy is thus grounded in the ethnic make-up of the continent, then it would be, by definition, impossible to democratise the European Union. Without people no state, without state no democracy without democracy no people - this reading of the constitutional situation in Germany and the wider Western Europe caused much criticism (Bryde, 1994; Weiler, 1995; Joerges, 1996; Ipsen, 1994; Frowein, 1993), precisely because it forecloses the opportunities for increasing the progressive democratic reform of Union itself.

The debate surrounding this judgement, as well as the general critique of the linkage between ethnicity and democracy have attempted to show that it would be misleading, indeed even dangerous, to view the linkage between liberal democracy and the nation-state as inherent or automatic. As we have sought to show here, the link between democracy, national identity and statehood is a historical construction. It has been a powerful construction which has made it difficult to think about legitimate government and democracy outside the framework of the nation-state. Yet the fact that 'national democracy' is a social construction does not mean that it is easily toppled by secular processes such as globalisation or integration. Indeed, as we observe in the post-Cold War world, such processes induce "societal insecurity" in populations which increasingly have to confront the challenges of transnationalism without the protective shelter of 'their' state (Wæver *et al.*, 1993). A revival of ethnic nationalism in the 1990s has been one of the consequences (Connor, 1994).

The force of social constructions is such that their consequences are 'real'. The social and political practices induced by, and helping to maintain, social constructions such as the foundation of democracy in national self-determination must enter into the equations of constitutional engineering. In a constructivist understanding of social life, social practice is constituted through elements of structure. At the same time, structures are the outcome of the actions of social agents. As such they are subject to change and transformation (Giddens, 1984). From such a constructivist perspective it becomes apparent

that in constitutional choices for the European Union can, on the one hand, induce changes in the established practices - i.e. expand the possibilities for transnational democracy - but that these have choices have, on the other hand, recognise the limits of those practices which continue to be reproduced, consciously or unconsciously, in current social life. If this recognition of established social practice is ignored, the European constitution is likely to be regarded as illegitimate by a significant part of the population.

Recognition of historically constructed linkages such as the one between identity and democracy certainly limits the prospects for significant progress towards further integration and further democratisation. But emphasising this is not the same as saying - as the German Constitutional Court has appeared to do - that there cannot be legitimate government outside the framework of democratically constituted nation-states. The limits imposed by pointing to the force of social constructions are less about the extent of change but about the speed. The constitutionalisation of European integration will have to recognise that the legitimacy of the Union cannot be detached from the social practices underlying the polity. Considering that these practices are usually only changing slowly, this is a strong argument in favour of introducing novel, democratic procedures only gradually while remaining sensitive to the values of integration and nationality in the legitimisation of supranational governance.

Ignoring the implications of nationality for the legitimisation of emerging polities is bound to lead to more serious problems than unsatisfactory policy-implementation or to a 'bad press' of Union institutions in Member States. On the global scale, the experience of democratisation multi-national polities has regularly led to bloody and costly fragmentation processes. The history of decolonisation - from the foundation of India to the current conflict in Chechnya - is rich in examples. In Western Europe, the spectre of fragmentation does not raise fears of bloodshed, yet is clearly antagonistic to the goal of integration which had the original aim of overcoming war and bloodshed on the continent. The basic dilemma that any constitutional choice of the European Union needs to address is the way in which supranational governance can be democratised, without jeopardising the integrative process. This is why the abstract ideal of a polity based on majoritarian parliamentary democracy needs to be adapted to the special requirements of EU governance.

What follows from this general discussion is that the legitimacy of the EU is based on three distinct values: democracy (the demand for public accountability), integration (the search for institutionalised solutions to transnational policy-making), and Member State autonomy (the maintenance of national diversity). Such a triangular conception of EU legitimacy is a reflection

of the "contradictions between intergovernmental bargaining, functional administration and democracy [which are] embedded in the treaties establishing the European Communities" (Wallace and Smith, 1995: p.140). We have indicated how the values of democracy, integration and national autonomy are in conflict with each another. A European constitution aimed at enhancing the legitimacy of the system of supranational governance will therefore need to balance these carefully. The potential of democracy and public accountability for the legitimacy of the Union is apparent. The significance of system effectiveness and of national diversity in legitimating the EU require brief clarification.

European integration, having turned to the path of functional integration, requires positive results in the economic realm for its justification. Providing welfare benefits and economic growth is generally seen as a way of legitimising emergent polities. Lipset writes that to "attain legitimacy, what new democracies need above all is efficacy, particularly in the economic arena, but also in the polity. If they can keep the high road to economic development, they can keep their political houses in order." (Lipset, 1994: 1). While this statement is directed at new democracies - those emerging from colonial or dictatorial rule - it rings true also with respect to the European Union. And clearly, the use of arguments about the economic benefit deriving from integration has been pervasive, both in theory (Kirchner and Schwartz, 1995) and in practice (Cecchini Report, 1988). Consequently, it has been argued that the greater efficiency of supranational decision-making can balance the 'democratic deficit' (Jachtenfuchs, 1995).

What remains is the EU's recognition of national identity and state autonomy - what is termed here "the maintenance of national diversity". National interests are, of course, well entrenched in Council of Ministers and IGC, but it is worth noting that despite this entrenchment there is an increasing suspicion among national publics and elites that national diversity is under threat from the integration process. In response, it is usually easy, but unsatisfactory, to oppose further integration and democratisation. But a number of authors have pointed to ways in which integrative progress could be organised in an "autonomy-respecting" manner (Zürn und Preuss, 1995; Scharpf, 1994). One way suggested would combine majority and nationality principle in the European Parliament (Katz, 1994). Other authors have developed the consociational model for the European context (Taylor, 1991; Chrysoschoou, 1995).

The dilemma of European constitutional choice results from in-built contradictions between the values of democratic government, effectiveness of

supranational decision-making and maintenance of national diversity. Significant progress on each of these values is bound to jeopardise the realization of the other two, and that as a result of one-dimensional reform the legitimacy of the system will be threatened. Below the repercussions of this dilemma will be discussed with respect to current institutional choices. But the tensions induced by the contradictory demands of this triangle can also be seen in the shifts which the integration process has undergone in the past. As the Community has attempted to legitimise its functioning by relying too heavily on one aspect, legitimacy has suffered, in the long run through the neglect for the other angles of the triangle.

In the 1950s and early 1960s there was a high degree popular support and integrative progress, but it was seen as threatening national autonomy and had to be successively down-scaled. In the 1970s and early 1980s, little integrative progress was made, but the EC's ability to recognise national diversity was demonstrated through enlargement. Democratic values received a boost through the introduction of direct elections to the EP. Yet, the "Common Market" was demonstrably ineffective in the face of economic crisis, with the associated problems for legitimacy. Later in the 1980s, there was progress on the integration front with the '1992' programme - with credits for the EC in facilitating the export-led boom - but insufficient progress towards a "Citizens' Europe" led to the crisis of legitimacy after Maastricht. In 1996, the legitimacy of the Union is threatened, once more, by its inability to engage actively the economic problems of the day, in particular the crisis of unemployment.

European integration has muddled through these problems in the past, and it would be misleading to draw an image of concurrent crises. This section merely intended to demonstrate the complex and multi-faceted nature of legitimacy in the European Union. A one-dimensional extension of parliamentary procedures - giving full co-decision making powers to the European Parliament - might lead to a centralisation of power on the European level. Increasing the participation of national - and regional - parliaments carries the risk of slowing down or stalling effective decision-making in the EU. Either solution, or a combination of both, would enhance the EU's democratic legitimacy. But it would jeopardise, at the same time, the legitimacy the system derives from producing effective policy-outputs and/or the way in which it maintains recognition of national diversity and autonomy (Dehousse, 1995). It might act, in other words, as the catalyst towards the kind of systemic fragmentation that democratisation has shown itself to be in other historical or geographical contexts.

This is not to say that there ought not to be an extension of parliamentary powers or democratic rights. Clearly, the democratisation of the EU is an

unfinished project, and political pressure in this direction needs to continue. But to point to the particular dilemma of European governance developed above implies that - unless we are prepared to see the EU system turning into a state - it cannot be legitimised entirely through majoritarian democratic procedures. Reforms and constitutional choices will need to adapt the ideals of liberal democracy to the specific conditions of supranational governance. What this means in practice is that calls for a "democratic Europe" ought to be replaced by a debate about balancing integration and democratisation. An important element in the a debate about continuous and gradual reform is the examination of the role and functioning of each institution, the management its relationships with other supranational institution, with national governments and with individual citizens. Such comprehensive examination of individual institutions is one way of establishing the constitutional needs of European governance, Below follows an outline of such an analysis of the European Commission.

Multiple Accountability of the European Commission

Above, a triangular model of EU legitimacy has been developed, arguing that the values of democratic governance, effective integration and national autonomy need to be balanced in order to maintain legitimacy. Each of these has an independent normative value, and the pursuit of one at the expenses of another will damage rather than raise the legitimacy. Such a triangular conception of EU legitimacy neatly places the main institutions: the Council of Ministers as the guardian of national autonomy, the EP as the guardian of democratic governance, and Commission, together with the ECJ, as the guardian of effective integration.

This inter-institutional model of EU legitimation is easily supported by a conventional institutional perspective. The EP derives its legitimacy and authority from direct elections which to some extent bypass the national political circuit (even if this is still more a formally than an applied rule). Party federations are the main aggregates of political power within the chamber, and the resultant political groups cut across national boundaries. While the Parliament supports a maximalist integrative agenda, it is prepared to jettison integrative progress as much as national sentiments when it comes to the achievement or protection of democratic procedure and parliamentary status. Disputes over the budget have, in the past, been the clearest example of that. In equal measure, the Council of Ministers is an organ concerned with advancing integration and political representation, (if aggregated at a very high level), while at the same time it is the arena in which individual state representatives seek to protect what they regard as 'national interests'. It is the latter aspect of

its work which has turned it into an often sceptical, defensive and occasionally even non-co-operative actor in the integration process.

The Commission, finally, does pursue communitarian goals and is charged with the administration of common policies and the supervision of implementation in the member states. As a result, it has come into close contact with actors on the regional and local level, as well as with non-state actors in Brussels. Regularly it has been in conflict with the Member States, not in the least before of the European Court, but it is also frequently charged with violations of the principles of transparency and openness in the EU. Its allegiance is less to the specific interests of either Member States or 'the people', but rather to the much more abstract *acquis communautaire*. Together with the Court, the Commission produces legislation and supervises its implementation, independent of Member State interests or popular pressure.

But while this perspective shows is that each of the central institutions of the EU - Council, Parliament and Commission - does, at a superficial level, perform a specific and discrete normative agenda, it in practice harbours reflexes and organisational logics which are in contrast if not in conflict with these. The image of a 'division of labour', then, does make some sense of the high degree of consensualism and inter-connectedness of the European institutions - in order to maintain overall legitimacy all the institutions simply have to respect each others' specific normative role - it still is a mighty simplification. Constitutional 'divisions of labour' are never that neat, and the EU system is no exemption. Indeed, if anything, it demonstrates the opposite.

The reproduction of this inter-institutional logic can also be identified on the intra-institutional setting. In fact, each of the institutions can be shown to possess democratic, and integrative and a national logics. Consequently, the balancing act of legitimation is performed not only on the level of the inter-institutional relations, but also, and perhaps more crucially, within each of the institutions. In maintaining its own institutional legitimacy against the frequent desire of creating a hierarchical, simpler and perhaps more democratic regimes, the Commission has consistently defended a functionalist structure that, it could be argued, has pursued integration at any costs. At the same time are frequent claims that units within the Commission, and even the institution as a whole fall under the spell of individual governments when it comes to the pursuit of specific policies. Clearly, the Commission is different things to different people. In looking at the Commission in slightly more detail, it is important to recognise at the outset that the role of guardian of the integration process remains the oldest and most important tasks of the Commission. Despite a lot of action and commitment to other values (such as democracy and the respect of national

autonomy), the pursuit of "ever-closer union" remains the primary object of the European Commission. But a closer look reveals that within the Commission other forces are at work, which are often hidden from view by the image of the Commission as a unitary actor. In line with the triangular perspective on EU legitimacy developed here, three aspects of Commission activity can be identified and related to discrete legitimization agendas. This distinction is between a 'parliamentary', a 'technocratic' and a 'diplomatic' Commission. While the presence of such contradictory agendas clearly bodes ill for institutional coherence, the conclusion here is not that greater uniformity is called for. Instead, the continuation of these rival legitimization agendas within the Commission is necessary, since it is the balance between all three of them, rather than the preponderance of any one, which constitutes the institution's overall legitimacy.

The 'parliamentary' Commission does in fact exhibit a strong and growing tendency to act as a representative government, with public access to internal Commission activity, the existence of party links and the significance of parliamentary scrutiny having grown massively in the 1990s (Lord and Hix, 1995). After Maastricht, when during the difficult ratification process it became clear that the functional nature of the European project of the 1980s had left the people behind, all the institutions have sought to remedy the 'democratic deficit'. In the intervening period, the Commission, in particular, has felt the need to respond to the critique of technocracy and democratic deficit. An elaborate programme of greater openness, transparency and subsidiarity has been the result (Preston, 1997).

This demonstrates that the development of a direct Commission-public relationship is accelerating. The various channels - the European Parliament, the intermediary social groups and organisations, the provision of access to, and certainty about, administrative procedures within the Commission - are combined attempts at making the Commission more accountable to citizens. But, as was pointed out above with respect to the comitology structure, this is not an easy process, and the Commission still has a long way to go before not only relating directly to the public, but actually transmitting the impression that citizens are in any meaningful way able to hold the Commission to account.

By contrast, the presence of an 'intergovernmental' Commission is demonstrated by a number of unique features. One is that the appointment structure in the upper echelons of the Commission appears to be dominated by concerns about nationality more than political affiliation. The appointment of the Commissioners themselves is, of course, explicitly based on nationality. Hardly less explicit is the role of Commissioners as a link between national

political systems and the EU bureaucracy. While on the one hand operating as something like ambassadors of the EU when they return to the national political circuit, they are also widely regarded as the most appropriate entry-point for political interests from the member state level when they seek influence in Brussels. The increasing incidence of voting in the college of Commissioners regularly sees the Commission divided along national lines to the point where the line up of ministers in the Council and the Commissioners in the college behind declared national positions is taken for granted. A further aspect of the Commission's internal intergovernmentalism is that much of the EU's regulatory policy-making is conducted in the ambit of comitology, in which the Commission participates, but which is strongly guided by Member States' interests in maintaining control over the policy-making process.

At the same time, the technocratic character of the Commission has not really subsided. In a number of areas, the Commission has tried to enhance its independent character. While some areas of Commission activity have been opened to the influence of party politics, others have been removed from partisan politics. One aspect here is the growth and rising intensity of scientific advice on which the Commission relies (Joerges, 1994). Another is the Commission's activity in the fields such as monetary or competition policy which are based on institutional independence. With respect to the latter, one observer has complained that the Commission appears as "the master of its own procedural destiny" (Brent, 1995).

Since the Commission cannot hope to fully satisfy the demands of democratic legitimacy and member state interests, there is merit in the search for alternative models. As one way of escaping the contradictions of multiple accountability, greater institutional independence is being considered as a 'third way' of legitimising the Commission's activity. The establishment of independent regulatory authority removed from the political circuit of decision-making. In a sense, it means turning the potentially paralysing effect of having to account to two 'masters' into a virtue. The aim would be to remove the Commission's regulatory activity from the floor of partisan politics, and to achieve legitimisation through greater independence rather than greater accountability (Majone, 1994). In that respect, the Commission forms the core of a European Union that can be seen as the "independent fourth branch of government" (Majone, 1993).

Recent developments indicate this path as one of potential in the future design of the Commission. A number of independent "Decentralized Agencies" were set up in 1993, even though this was mainly for low-key tasks like the licensing of medicinal products and the exchange of governmental information

in a variety of sectors (Falke, 1995). There are demands for parts of the Commission to be turned into independent agencies. There have been repeated calls, for example, taking merger control out of what is seen as a too political process of decision-making (Ehlermann, 1994). Others go further and demand that the Commission be split up into various such independent agencies: a European Trade Commission, a European Environmental Agency, a European Cartel Office, etc. (George, 1995; Vibert, 1995). The case for such an 'unbundling' of the Commission is argued with reference to the increasing diversity of tasks, and - again - the need to remove delicate decisions from political influences.

This does not seem to find much sympathy with most national delegations and the Commission itself (Council of the European Union, 1995; European Commission, 1996). Clearly, greater institutional independence, linked to a more explicit administrative code of conduct, can only be one element in the legitimisation of Commission activity. Greater use of comitology, a structured relationship to the European Parliament and more direct contact and communication with individual citizens will also have to be features of the new Commission. In other words, the Commission will continue to be a hybrid organisation, combining supranational and intergovernmental elements.

Conclusion: Squaring the Triangle?

In all its complexity, the Amsterdam Treaty appears at first sight to have pushed the Commission along the 'parliamentary' avenue. With the EP achieving greater co-decision powers *vis-a-vis* the Council and enhancing its powers *vis-a-vis* the Commission as part of a revised investiture procedure, the expectation is that the Commission will become more accountable to Parliament. That is certainly the impression of those within the Commission who are responsible for parliamentary liaison and who have seen their workload exponentially increase in the past few years. Yet, at the same time, the clauses in the new Treaty which govern the number of Commissioners tell a different story. The larger countries have linked the reduction in the number of 'their' Commissioners from two to one to the reform of voting in the Council - a clear sign (if any was needed) that the future legitimacy of the Commission hinges on the element of Member State representation that goes on within it.

There is in fact, very little to suggest that the conflict between 'parliamentary' and 'intergovernmental' modes will not continue to co-exist within a Commission that is becoming more internally diverse and divided as its responsibilities widen. The 'third way' - a Commission that is more

'independent' in relying on its unique procedural expertise and its central position as a broker among the multiple policy-networks of the EU, will therefore also be necessary to balance the tension between overall centralisation - which is induced by the move towards majoritarianism - and fragmentation - which results from the importance of national positions within the Commission. A degree of independence from either of these forces is what might provide some slight relief for an institutions that might otherwise be tempted (or forced) down one or the other of these slippery slopes - with the potentially disastrous results for the legitimacy of the Union as a whole, as discussed in the first part of this paper.

Even as it is, the presence of such three very different organisational modes within the same institution will lead to internal contradiction and to inconsistencies in policy-output. But to the extent that European regulatory activity in the future will always require member state support, wider public acceptance and a degree of independent authority, internal contradiction and the lack of coherence is the price the Commission will have to pay to remain the key actor in the development of European governance it has been in the past decade, and to contribute positively to the legitimisation of the EU as a whole.

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